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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*

v.

OVERNITE TRANSPORTATION COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	4
Reasons for Granting the Writ	9
Conclusion	17
Appendix A	18

TABLE OF CASES

	Page
Carpenters Local 131 v. Cisco Construction Co., 266 F2d 365 (9th Cir. 1959), cert. den. 361 U.S. 828	14
Chauffeurs Local 175 v. NLRB (McJunkin Corp.), 294 F2d 261 (D.C. Cir. 1961)	14, 15
Garner v. Teamsters Local 776, 346 U.S. 485 (1953)	16
General Drivers, Warehousemen and Helpers, Local Union 89 v. American Tobacco Co., Inc. 348 U.S. 978 (1955)	16
Gilchrist v. UMW, 290 F2d 36 (6th Cir. 1961), cert. den. 368 U.S. 875	15
Hinson v. Dawson, 244 N.C. 23	12
International Rice Milling Co. v. NLRB, 341 U.S. 665 (1951)	13
Jocie Motor Lines, Inc. v. International Brotherhood of Teamsters, Superior Court, Mecklenburg County, N. C., S. D. No. 38-184	10
Local 978, Carpenters v. Markwell, 50 LRRM 2742 (8th Cir. 1962)	14
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941)	13
Milwaukee Plywood v. NLRB, 285 F2d 325 (7th Cir. 1960)	11, 14, 15

	Page
New Dixie v. International Brotherhood of Teamsters, Superior Court, Mecklenburg County, N. C. S. D. No. 38-183	10
NLRB v. Tramster Local 639 (Curtis Bros.), 362 U.S. 274 (1960)	11, 13
Overnite Trucking Co., 130 NLRB No. 108	11
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959)	15, 16
Seafarers International Union v. NLRB, 265 F2d 585 (D.C. Cir. 1959)	14
Sinclair Refining Co. v. Atkinson, 8 L ed 2d 440 (1962)	15
Teamsters Local 174 v. Lucas Flour Co., 7 L ed 2d 593 (1962)	15
Teamsters Local 795 v. Newell, 356 U.S. 341 (1958)	13
Teamsters Local 901 v. NLRB (Gonzales Chemical Co.), 293 F2d 881 (D.C. Cir. 1961)	11
Teamsters Local 984 v. Humko Co., 287 F2d 231 (6th Cir. 1961), cert. den. 366 U.S. 962	14
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957)	15
Thornhill v. Alabama, 310 U.S. 88 (1940)	13
UMW v. Osborne Mining Co., 279 F2d 716 (6th Cir. 1960), cert. den. 364 U.S. 881	15
United Mine Workers v. Patton, 211 F2d 742 (4th Cir. 1954)	12
United Plant Guard Workers, 136 NLRB No. 9	11
Weber v. Anheuser-Busch, 348 U.S. 468 (1955)	16
Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957)	13, 16

STATUTES

National Labor Relations Act, 61 Stat. 156, 29 U.S.C. 151 et seq:	
Section 301	15, 16
Section 303	2, et seq.
Section 8 (b)(4)	9, 13, 14, 16

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OVERNITE TRANSPORTATION COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of North Carolina entered May 2, 1962.

OPINIONS BELOW

The opinion of the Supreme Court of North Carolina is reported at 257 N.C. 18, and is attached hereto as Appendix "A". (See also R. 614).

JURISDICTION

The judgment and order of the North Carolina Supreme Court was entered on May 2, 1962, and a Petition for Re-

hearing was denied on July 9, 1962, making such judgment final.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether, in a suit for damages brought in a state court under Section 303 of the National Labor Relations Act, that Section, principles of federal preemption, and the protections accorded peaceful primary picketing under the federal law require the severance and elimination of damages arising out of legal picketing activities from damages arising out of illegal picketing activities where such activities are separately conducted and the damages are capable of separate calculation?

2. Whether federal labor law or policy requires the granting of a new trial in such a suit where the trial court has admitted to the jury prejudicial evidence relevant only to a claim for punitive damages, which claim the state supreme court has determined was not separately pleaded and was thus not allowable in a Section 303 action?

STATUTES INVOLVED

Section 303 of the National Labor Relations Act, 61 Stat. 156, 29 U.S.C. 151 et seq., prior to its amendment in 1959 read as follows:

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using,

selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

STATEMENT OF CASE

In September of 1959, respondent Overnite Transportation Company, a common carrier of motor freight operating out of Atlanta, Georgia, in the mid-southern states, filed an action for damages against petitioner, a national labor organization, in the Superior Court of Mecklenburg County, Charlotte, North Carolina. The action was brought under Section 303 of the Taft-Hartley Act and alleged that petitioner had engaged in various striking and picketing activities in violation of that Section, which had resulted in actual damages to the respondent in the amount of $500,000 and punitive damages in the amount of an additional $500,000. No separate cause of action for punitive damages was stated, nor were there any allegations of violence, mass picketing or other disorder. (R. 3-6).

At the jury trial, which commenced in November of 1961, plaintiff introduced evidence indicating as follows: The petitioner, in May of 1959, through its affiliated local unions in the area, called a strike against respondent Overnite. The object of the strike was to achieve recognition for the union and a collective bargaining agreement for Overnite's employees. (R. 286-7; 311-12; 314). Petitioner had not been certified as a representative of Overnite's employees by any government agency. (R. 300). The strike was accompanied by peaceful picketing carried on at Overnite's headquarters in Atlanta and its terminals in Savannah, Georgia, Columbia, South Carolina, Charleston, South Carolina and Richmond, Virginia. (R. 288, 312-13). In addition, in several cities in North Carolina and South Carolina other than the above, the pickets followed trucks of Overnite and picketed these trucks when they were engaged in loading or unloading at terminals or premises of other employers. This picketing likewise was peaceful. In some of the foregoing cities, Overnite terminals were also located and were also peacefully picketed. (R. 55). There was no attempt to show, nor did the evidence indicate, that employees of any other employers were regularly employed

at or on any premises or terminals of Overnite; no Overnite premise was a common situs of employment.

The picketing at Overnite's premises and terminals where only Overnite's employees were employed resulted in the refusal of some of these employees to cross the picket lines and the refusal of the employees of other carriers who were handling Overnite freight or were interlining with Overnite, to cross the picket line. (R. 203-4, 206-207). In addition, the picketing of Overnite trucks at the terminals of other carriers or employers resulted in the refusal of the employees of those carriers and employers to handle or interline Overnite freight. As a result of these various refusals, Overnite was put to considerable expense in hiring additional help and facilities in order to carry on its freight-carrying and interlining business, namely, the sum of $232,837 in wages for additional employees employed as a result of the strike activity, $16,662 in hiring guard service for protection purposes,[1] $2,116 in extra telephone and communication expenses, $51,757 in increased claims for damage to freight caused by inexperienced new employees, and finally, an estimated $59,819 in net income fall-off or profit loss during the strike,[2] for a grand total of claimed actual damages in the amount of $363,193. (R. 241-245, 233, 234, 237-239, 338).

At the trial defendant objected to the introduction of the evidence of peaceful primary picketing at Overnite's own premises and terminals, and to the introduction of evidence of damages allegedly resulting from this picketing. (R. 211-15, 217-18, 222).

At the conclusion of the trial, the trial court failed to explain to the jury members, with any particularity, the

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[1] This in spite of the fact that there was no showing whatsoever of any violence or disorder in connection with any of the striking or picketing activities of petitioner.

[2] It is significant that on the plaintiff's own showing, the net income of plaintiff, *with the verdict added*, during the year of the strike, 1959, is $328,000 more than in 1958, when there was no picketing, and $281,000 more than in 1960, when there was no picketing. (R. 257, 258).